SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-1226

JAMES M. SINCLAIR, JR.,

Petitioner,

vs.

ANNA ROZA BOUGHTON, sometimes known as ANNA ROSA SINCLAIR,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

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Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Petitioner James M. Sinclair, Jr., prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit in the above entitled case for the reason that the judgment is in direct conflict with decisions in the Second, Fourth, Fifth, and Ninth Circuits and in direct conflict with the decision of this Court in *Barber v. Barber*, 62 U.S. 582, 21 How. 582, 16 L.Ed. 226.

Citations to Opinions Below.

The opinions below are unreported and are printed *infra* in the Appendix.

Jurisdiction.

The judgment of the Court of Appeals was entered November 21, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Question Presented for Review.

Does this Court's decision in *Barber v. Barber,* 21 How. 582, still bind the Sixth Circuit by *stare decisis* in holding that a domestic relations judgment of a competent court may be enforced in equity in a Federal court under diversity jurisdiction?

Statement of the Facts of the Case.

Petitioner filed the action in the District Court for declaratory relief to declare his money rights under a judgment of a competent state court that he was not married to respondent, and for an injunction to preclude respondent from filing a fourth harassing lawsuit against him. Jurisdiction was founded on diversity of citizenship with the matter in controversy exceeding the value of $36,000.00. The District Court dismissed the complaint on its own motion just before respondent's counsel filed his appearance, the judge alleging lack of a controversy and that the court could have no jurisdiction of a "domestic" matter, despite the citation with the complaint of *Barber v. Barber,* 21 How. 582.

Despite citation of the same case to the Court of Appeals, it did, without brief from the respondent or oral argument, summarily affirm the judgment of the District Court *without any acknowledgement of said premiere case of petitioner's entire appeal* on the grounds that there manifestly was no federal diversity jurisdiction in such a so-called "domestic dispute"!

REASON FOR GRANTING THE WRIT.

Petitioner respectfully submits that the judgment of the Sixth Circuit Court of Appeals conflicts with the decisions in the Second, Fourth, Fifth, and Ninth Circuits and the uncontradicted decision of this Court in *Barber v. Barber*, 62 U.S. 582, 21 How. 582, 16 L. Ed. 226, and that therefore the case is of substantial importance enough under this Court's Rule 19(1)(b) to grant certiorari and hearing of argument (or summary remand expressly for the Sixth Circuit to consider the case in the light of this Court's *Barber* decision and the decisions of the other Circuits).

Barber upheld a federal court's jurisdiction in granting (1) money equitable relief (2) based on diversity (3) based on a domestic relations judgment of (4) a competent state court.

This is just what this *Sinclair* case requests: (1) equitable declaratory relief concerning respondent's claim for over $30,000.00 (2) based on diversity of citizenship (3) based on judgments of (4) competent courts that Sinclair was never married to Boughton, on "all fours".

Of course federal courts have no jurisdiction of "domestic disputes" where a state court should grant a divorce. However once the competent state courts have decreed that there is no longer any "domestic" relationship, the parties should be like any strangers in claims for money relief under diversity jurisdiction. Is there one diversity jurisdiction for strangers, and no diversity money jurisdiction for ex-husbands, nonhusbands, father and daughter, etc., all "ex-domestic" disputes or relationships?

The Fifth Circuit decided in *Paudler v. Paudler,* 210 F.2d 765, 766 (1954), that it had jurisdiction to adjudicate the property rights of the parties after divorce: "jurisdiction of the district court was sustained on a former appeal, 185 F.2d 901" (1950), cert. den. 341 U.S. 920 (1951).

The Second Circuit stated in *Southard v. Southard,* 305 F.2d 730, 731 (1962), that "there is no reason why a declaratory action should not prima facie lie to determine the controverted status of the parties.", after first citing *Barber.*

Rapoport v. Rapoport, 273 F.Supp. 482, 483 (1967) U.S.D.C. Nevada, relied on the Second Circuit rule for jurisdiction, and the Ninth Circuit, 416 F.2d 41 (1969) (cert. den. 397 U.S. 915), also cited the Second Circuit case on page 43, saying "jurisdiction thus grounded is not lost simply because the judgment attacked is a divorce decree."

The Fourth Circuit in *Harrison v. Harrison,* 214 F.2d 571 (1954) cert. den. 348 U.S. 896, affirmed a declaratory judgment of marital status and to enforce alimony payments under *Barber v. Barber,* 21 How. 582.

Petitioner will not here burden the Court with a full exposition of the reason for his need for a federal decree, and will say only that respondent has already filed 3 claims against plaintiff in the courts of Michigan and California, all of which were dismissed without her recovering anything, after expense and bother to plaintiff. Under *Woodmen v. O'Neill,* 266 U.S. 292; *American v. Ritholz,* 101 F.2d 883; etc.; a federal injunction is the only relief that will be effective for petitioner.

Conclusion.

Petitioner therefore contends that certiorari should be granted to resolve the conflict of the Sixth Circuit opinion, or a summary reversal, or summary remand expressly for the Sixth Circuit to consider this case in the light of this Court's *Barber* decision and the decisions of the other Circuits.

February 4, 1974.

Respectfully submitted,

JAMES M. SINCLAIR, JR.,
Petitioner Pro Se.

APPENDIX.

Order.

United States Court of Appeals, for the Sixth Circuit.

James M. Sinclair, Jr. Plaintiff-Appellant vs. Anna Roza Boughton, Defendant-Appellee, No. 73-1786.

Filed: Nov. 21, 1973.

Before: EDWARDS, McCREE and MILLER, Circuit Judges.

This appeal is before a panel of this court pursuant to Sixth Circuit Rule 3(e).

Appellant's complaint was dismissed by the District Court, *sua sponte*. The complaint was based upon diversity of citizenship and manifestly involves a domestic dispute between the parties of which federal courts have no jurisdiction.

We affirm the judgment of dismissal upon the ground that the issues are so unsubstantial as not to need further argument. See Sixth Circuit Rule 8.

ENTERED BY ORDER OF THE COURT
/s/ James A. Higgins
Clerk

Order Dismissing Complaint.

United States District Court, Eastern District of Michigan, Southern Division.

James M. Sinclair, Jr., Plaintiff, v. Anna Roza Boughton, sometimes known as Anna Rosa Sinclair, Defendant. Civil Action No. 4-0113.

Plaintiff, JAMES M. SINCLAIR, JR., has filed a complaint praying for injunctive and declaratory relief. Jurisdiction is founded on diversity of citizenship. 20 U.S.C. §1332. The action grows out of a domestic dispute between Plaintiff and Defendant. The relief sought is "a judgment declaring that [Plaintiff] is free from any liability whatsoever to the defendant and declaratory that it is just that defendant and her agents be enjoined from pursuing any judicial proceedings against the plaintiff for any cause without the prior permission of this Court." Plaintiff alleges that previously secured judgments of courts of the State of Michigan and the Province of Ontario, Canada are a bar to "any possible claims of the defendant" against the Plaintiff. A justiciable controversy is alleged to exist because of a "likelihood" that the Defendant will bring an action against the Plaintiff.

A similarly worded complaint involving the same parties was recently dismissed by Judge DeMascio for failure to state a claim upon which relief could be granted. *Sinclair v. Boughton,* Civil Action No. 39788 (E.D. Mich. March 27, 1973). That complaint also sought "a permanent Federal injunction restraining the

defendant from pursuing any judicial proceedings" against the Plaintiff. With regard to the allegations in that complaint, Judge DeMascio noted that "it is not suggested, nor is this court aware of any manner in which this allegation could support a civil action under the statutes of Michigan".

The present complaint suffers the same infirmity and, for the same reason, fails to state a claim upon which relief can be granted.

Moreover, the "actual controversy" required for cases wherein declaratory relief is sought under 28 U.S.C. §2001 is absent in this case. "A controversy, to be justiciable, must be such that it can presently be litigated and decided and not hypothetical, conjectural, conditional or based upon the possibility of a factual situation that may never develop." *Brown & Root, Inc. v. Big Rock Corporation,* 383 F.2d 662 (5th Cir. 1967). The judicial proceedings sought to be enjoined here have not yet been filed, or even threatened, and the complaint itself refers to them as "possible claims". Even if such claims were brought, it is apparent that they would deal (just as this complaint deals) with problems of domestic relations. It is well settled "that federal courts will not accept jurisdiction in domestic relations cases". *Gargallo v. Gargallo,* 472 F.2d 1219, 1220 (6th Cir. 1973).

Plaintiff has made a "request", appended to the complaint, "that any order to dismiss the complaint expressly grant plaintiff the courtesy of the right to

amend". Such a request is certainly anomalous and reflects a misunderstanding of judicial remedies. "It still remains incumbent upon a plaintiff coming into this court and seeking its jurisdiction to set forth facts upon which to grant his cause of action. [The court] cannot decide this case on something that is going to be amended next month." *Steins v. Chrysler Corporation,* 57 LRRM 2327 (E.D. Mich. 1964).

Having found that Plaintiff's complaint fails to state a claim upon which relief can be granted and fails to allege facts constituting a justiciable controversy, this court, acting *sua sponte,* orders that the complaint be, and the same is hereby DISMISSED.

/s/ LAWRENCE GUBOW
Lawrence Gubow
U.S. District Judge

Dated: May 25, 1973.

Complaint.

Declaratory Relief and Injunction.

United States District Court, for the Eastern District of Michigan, Southern Division.

James M. Sinclair, Jr., Plaintiff, vs. Anna Roza Boughton, sometimes known as Anna Rosa Sinclair, Defendant. Civil Action, File No. 40113.

1. Plaintiff is a citizen of Michigan.

2. Defendant is not a citizen of Michigan.

3. Defendant is a citizen of California and/or Canada and is a British subject.

4. An actual controversy of a justiciable nature exists between plaintiff and defendant exceeding the sum of $10,000.00, exclusive of costs and interest.

5. There never was a marital relationship between the parties to be severed, and such is expressly stated in the judgment dated February 17, 1964, incorporated in this complaint by reference to the attached copy.

6. The defendant claims from the plaintiff sums not clearly barred by the judgments incorporated in this complaint by reference to the attached copies, and the plaintiff is entitled to declaratory relief as to these sums, as well as the claims she makes that he claims are clearly barred by the judgments.

7. As of March 12, 1973, defendant claims from the plaintiff the sum of $36,000.00; plus one-half of whatever income that has come to plaintiff and will come to him in the future since he came to Michigan in 1962; plus an open claim for the support of the defendant.

8. Plaintiff alleges that he is in no way liable to defendant.

9. Defendant has by counsel filed 3 claims against plaintiff in the courts of Michigan and California, all of which were dismissed without her recovering anything, after expense and bother to plaintiff.

10. Defendant threatens to bring other such actions and force plaintiff to defend them to avoid being held to a default judgment superseding in Michigan his present judgment, under full faith and credit and res judicata. Defendant further threatens to institute proceedings in whatever jurisdiction plaintiff may inherit property or own property. One estate in which plaintiff inherited was attached by a creditor of one of the other heirs. Plaintiff is in doubt how best to manage his affairs under this threat and a declaratory judgment is needed to guide him and plaintiff has no other adequate remedy and it would be equitable and prevent a multiplicity of actions bothering many States of the Union for this Court to decide the conflicting claims and issue its declaration that none of any possible claims of the defendant are valid against the plaintiff, since they are barred by fact, judgments, equity, and/or limitations.

11. As an adventuress the defendant has carried forth a wrongful scheme to secure money from the plaintiff, depending upon fraud, duress, perjury, and forgery. Perjuries by the defendant are documented for the dates of October 27, 1952, November 21, 1953, September 29, 1964, and March 21, 1967, among others. Documents were forged by the defendant in 1964 and at some date subsequent to November 28, 1940. In an official government proceeding defendant was on June 4, 1970, found to have given false information in an

official proceeding under penalty of perjury, which information she further corroborated in said first proceeding by uttering a document of a governmental agency which she had forged and falsely altered. Because of the defendant's amoral ability and disposition to commit perjury and forgery, plaintiff has no adequate remedy other than a permanent Federal injunction restraining the defendant from pursuing any judicial proceedings, whatsoever or wherever against the plaintiff contrary to the factual merited declaratory judgment of the Court.

12. Defendant was employed at a salary in excess of $400.00 per month and has the ability to earn even more, and had $8,000.00 in the bank under her sole control.

13. There exists a likelihood that the defendant would bring an action to secure a default judgment against plaintiff without serving notice thereof upon plaintiff, possibly by means of a perjured affidavit of service; or defendant may bring an action when plaintiff is unable properly to defend same because of illness, lack of funds, pressure of business, etc.

WHEREFORE plantiff prays for a judgment declaring that he is free from any liability whatsoever to the defendant and declaratory that it is just that defendant and her agents be enjoined from pursuing any judicial proceedings against the plaintiff for any cause without the prior permission of this Court; and prays that said injunction issue.

/s/ James M. Sinclair, Jr.
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